

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9408 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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IBRAHIM AHMED SURTI & CO

Versus

COLLECTOR GODHRA

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Appearance:

MRS SANGEETA N PAHWA for Petitioner

MR BY MANKAD AGP for Respondents

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/09/97

ORAL JUDGEMENT

Rule. Mr BY Mankad learned AGP waives service of rule on behalf of the respondents. At the request of the learned advocates, this petition is finally heard today.

The petitioner by way of this petition is challenging the order dated 14.2.1992 passed by the Collector, Panchmahals, confirmed in the revision application by an order dated 30.11.1994 passed by the

Deputy Secretary, Food & Civil Supplies Department, State of Gujarat, whereby the authorities have ordered to confiscate 25% of the 90 quintals of wheat belonging to the petitioner. In the shaw-cause notice issued against the petitioner, the following allegations were made against the petitioner:

- 1) the bill of 90 quintals of wheat was unsigned.
- 2) the wheat bags were containing the mark of Food Corporation of India;
- 3) since the wheat was received in off season, there is sufficient reason to believe that the said wheat was of Government and kept for public distribution; and
- 4) the wheat is similar to the wheat which is used for public distribution.

The petitioner in his explanation while denying the allegations has produced the bill of purchase of wheat from the farmers and, contended that the wheat were not of public ditribution. According to the petitioner, the wheat bags are produced by him in bulk and, therefore, petitioner did not know which types of wheat bags were purchased. The petitioner also explained that the wheat is available during the whole year and, therefore, it is not necessary that only in wheat's season, the wheats are available. Considering the impugned order passed by the respondents, it is clear that the respondents have not considered the explanation given by the petitioner and the orders are passed on assumption. Regarding the allegation that bill No. 210 for the purchase of 90 quintals of wheat which is unsigned and all details about the wheats are not stated, are the allegations of technical in nature. The Hon'ble Supreme Court in AIR 1994, p. 2663 has clearly laid down that for all technical breaches, no confiscation can be ordered. The allegation that the wheat bags were containing the mark of Food Corporation of India and that the wheat was received in off season, there is sufficient reason to believe that the said wheat was of Government as the same was similar to the wheat which is used for public distribution, are the finding based on assumption, for which no order of confiscation can be passed. If the allegations levelled against the petitioner are proved, in that event, the authorities would have passed the order of 100% confiscation, but as the same has not been done and the order of 25% of confiscatin is passed which on the contrary would suggest that the respondents are

also not clear as to what breach is committed by the petitioner. In any case, the finding recorded by the authorities based on no evidence. I am of the view that the respondents, in any case, not entitled to confiscate even 25% of the seized wheat of 90 quintals.

In the result, the orders dated 14.2.1992 passed by the Collector, Panchmahals as confirmed in the revision by an order dated 30.11.1994 passed by the Deputy Secretary, Food & Civil Supplies Department, State of Gujarat, are quashed and set aside. Rule is made absolute with no order as to costs.

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